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SUPREME COURT, U.S.

No. 73-751

In the Supreme Court of the United States

October Term, 1973

PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE,

Petitioners,

v.

LLOYD F. EARLY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SEVENTEENTH JUDICIAL CIRCUIT COURT, BROWARD COUNTY, STATE OF FLORIDA

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LLOYD F. EARLY,

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PETITION FOR A WRIT OF CERTIORARI TO THE SEVENTEENTH JUDICIAL CIRCUIT COURT, BROWARD COUNTY, STATE OF FLORIDA

Petitioners, Palm Beach Newspapers, Inc., a Florida corporation, Gregory E. Favre, R. H. Kirkpatrick, Tom Sawyer and Jane Arpe, pray that a Writ of Cer-

tiorari be issued to review the orders of the Seventeenth Judicial Circuit Court, Broward County, State of Florida, entered in the above-entitled case.

OPINIONS BELOW

The opinion of the District Court of Appeal, Fourth District, State of Florida, is reported at 274 So.2d 890 (Appendix "G"). The opinion of the Florida Supreme Court refusing to review said decision is not yet reported. It is attached as Appendix "J".

JURISDICTION

The orders of the Circuit Court, Broward County, Florida, sought to be reviewed here, were dated August 8, 1972 (Appendix "C"), and August 28, 1972 (Appendix "D"). The order of the District Court of Appeal, Fourth District, State of Florida (Appendix "G"), upholding the circuit court decisions, was dated and entered on March 16, 1973. Rehearing was denied on April 10, 1973. The order was made final by an order of the Supreme Court of Florida dated July 10, 1973 (Appendix "J") On October 11, 1973, the Supreme Court of Florida refused to rehear its order-opinion of July 10, 1973, and dismissed the case for alleged lack of jurisdiction. (Appendix "K"). Petitioners were granted thirty days to seek review in this Honorable Court. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257. The orders of the state court violate the rights of petitioners guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

Under these circumstances, the Writ of Certiorari runs to the Seventeenth Judicial Circuit Court, Broward

County, State of Florida. See *Interstate Circuit, Inc. v. City of Dallas,* (1968), 390 U.S. 676; *Michigan-Wisconsin Pipe Line Co. v. Calvert* and *Panhandle Eastern Pipe Line Co. v. Calvert,* (1954), 347 U.S. 157; *American Railway Express Co. v. Levee* (1923) 263 U.S. 19; and *Stern & Gressman,* Supreme Court Practice, Third Edition, Sec. 3-5, page 69.

It was first necessary to seek review by the Florida Supreme Court before filing Petition for Certiorari in this Court. See *Banks v. California* (1969) 395 U.S. 708.

NOTE 1:

Florida Statutes Section 59.45 provides:

"59.45. Misconception of remedy; supreme court. - If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the Supreme Court."

By petition for Rehearing and earlier brief, it was pointed out to the Florida Supreme Court that in addition to the erroneous ruling by the state court on the Constitutional question, reviewable on appeal, the ruling here is further reviewable on "conflict" certiorari.

Accordingly, in the Petition for Rehearing, it was again prayed that the Florida Supreme Court review either on appeal or by certiorari. The Supreme Court of Florida denied the Petition for Rehearing and refused to take jursidiction.

Accordingly, Petitioners here have exhausted their remedies for review in the Courts of Florida and their only recourse now is in the Supreme Court of the United States.

As stated in *Evans v. Abney,* 396 U.S. 435 (1970):

"No state law or act can prevail in the face of contrary federal law, and the federal courts must search out the fact and truth of any proceeding or transaction to determine if the Constitution has been violated"

QUESTIONS PRESENTED

1. Does a state court order which requires newspaper Petitioner to produce its Treasurer for the purpose of deposition under penalty of contempt and to produce for inspection and copying its confidential financial records, including balance sheets, profit and loss statements and Federal and state income tax returns deprive Petitioners of their Constitutional rights?

2. Does the state court order (affirmed by the District Court of Appeal) denying newspaper Petitioner's Motion to Strike the $2,000,000.00 punitive damage claim of Respondent, a public official, deprive Petitioners of their Constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment I:

"Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." U.S.C.A. Const. Amend. I

Amendment XIV:

". . . (N) or shall any State deprive any person of life, liberty or property, without due process of law . . ." U.S.C.A. Const. Amend. XIV Sec. 1.

FEDERAL STATUTES INVOLVED

26 U.S. Code, Sec. 6103 (Appendix "L") and 7213 (a) (Appendix "M")

These statutes provide for the confidentiality of returns and also provide for criminal penalties for unauthorized disclosures.

STATEMENT OF THE CASE

Respondent (plaintiff) Lloyd F. Early, an elected public official and then Superintendent of the Palm Beach County Public School System, commenced this libel action in August of 1970. Respondent alleged that a number of articles published from about June of 1969 through August of 1970 in the Palm Beach Post and Palm Beach Times newspapers, which were critical of his administration of the Palm Beach County Public Schools, were libelous of him. The Respondent further alleged that the articles were false and were published with knowledge of their falsity or with reckless disregard of their truth or falsity. The complaint seeks compensatory damages in excess of $1,000,000.00 and punitive damages in excess of $2,000,000.00, and demanded a trial by jury. In the early stages of the lawsuit, on motion by Respondent the case was transferred from the Fifteenth Judicial Circuit Court in Palm Beach County to the Seventeenth Judicial Circuit Court in Broward County, both state courts.

The Petitioners, during the pre-trial stages of the lawsuit, moved for summary judgment in the state court on the grounds that the articles complained of were not published with actual malice under the rule of *New York Times v. Sullivan,* 376 U.S. 254 (1964), which of course is the decision of this court and is applicable to libel actions by public officials. The court ruled on May 27, 1971, that many of the articles complained of were not libelous; the court, however, held that the Petitioners had not carried the burden of affirmatively showing an absence of actual malice. (Appendix "A"). Upon rehearing, the court again denied the motion for summary judgment as to actual malice. The court's

opinion and order did not cite the decision of this Honorable Court, which had been handed down six weeks earlier: *Rosenbloom v. Metromedia,* 403 U.S. 29 (1971), which held that in cases of this kind, the plaintiff has the burden of demonstrating actual malice by clear and convincing evidence. 403 U.S. at 52.

The Respondent had commenced discovery on August 24, 1970, by serving written interrogatories upon the President of Petitioner, Palm Beach Newspapers, Inc. The interrogatory is as follows:

> "Interrogatory No. 51. If Defendant is a separate corporation, then state the following:
>
> A. The valuation of the assets, breaking same down into real estate, personal property and intangibles.
>
> B. The liabilities of said corporation.
>
> C. The net worth of said corporation.
>
> D. The income of said corporation for the years 1967, 1968 and 1969 to date.'

In response to Interrogatory No. 51, the Petitioner newspaper furnished Respondent a sworn statement by its Treasurer summarizing its total assets, liabilities and net worth for its fiscal years 1969, 1970 and 1971. These sworn statements show for those years, respectively, a net worth of $12,144,686.00; $12,753,649.00; $14,089,560.00. Respondent then served Petitioners with a notice of taking deposition of the Treasurer of

Petitioner newspaper, and served a subpoena duces tecum upon the Treasurer requiring him "to bring into court with you the following, to-wit: all books, account books and records, including any net worth and profit and loss statements of the Defendant, Palm Beach Newspapers, Inc. since its incorporation in 1969 to the present time."

Whereupon, on August 1, 1972, Petitioners' motion was heard, and the Court ordered that the Treasurer submit himself to deposition and bring with him *all profit and loss statements and balance sheets from the date of the inception of the corporation to the date of the deposition,* to-wit: August 2, 1972. Thereafter, on August 3, 1972, the Petitioners filed a motion for continuance of the deposition and again filed a motion for protective order and to quash subpoena duces tecum. The Petitioner newspaper again filed a motion for protective order and a motion to strike the punitive damage claim contained in Respondent's Complaint.

On August 8, 1972, the Court entered an order which included the following:

> "3. That Plaintiff's Motion to Produce filed before the Court on August 8, 1972, will be granted and the Defendant-Palm Beach Newspapers, Inc., is hereby ordered to produce on Friday, August 11, 1972, at 2:00 P.M. at 520 Pan-A Building, West Palm Beach, Florida, before David Finley, Notary Public, for inspection and copying (a) its detailed balance sheet or statement of net worth for the periods 1969, 1970, and 1971 (b) its profit and loss statement for 1969, 1970 and 1971, the latter being deemed to include any operating statement of profit

> and loss of the defendant corporation regardless of the title or formal designation which it might bear (c) the corporate federal and/or state tax returns for 1969, 1970 and 1971 of the defendant corporation."

On August 28, 1972, the Court also denied Petitioners' motion on constitutional grounds to strike plaintiff's claim for punitive damages.

Thereafter, on September 6, 1972, Petitioners filed a Petition for Writ of Certiorari and a brief in support thereof in the District Court of Appeal, Fourth District, State of Florida, seeking to review the two pre-trial orders of the state circuit court.

On September 8, 1972, Respondent filed a motion to quash petition for writ of certiorari. On October 10, 1972, the motion to quash was granted by the District Court of Appeal, Fourth District. Petitioners timely filed a petition for reconsideration and a petition for rehearing (Appendix "E") of the granting of the motion to quash. On October 16, 1972, the Court granted the petitions for reconsideration and rehearing. (Appendix "F").

On March 16, 1973, the District Court of Appeal, Fourth District, issued an opinion, per curiam, which is set forth below in its entirety:

> "The petition for writ of certiorari seeking review of an order denying defendants' motion to strike the claim for punitive damages, and an order which denied in part defendants' motion for pro-

tective order, is denied without prejudice to petitioners' right to have such matters reviewed upon full appeal if properly assigned and argued.

"REED, C.J. and CROSS, J., concur. OWEN, JR., concurs in part and dissents in part.

"OWEN, JR., concurring in part and dissenting in part.

"I would grant certiorari as to that portion of the order denying the defendants' motion for protective order which required the corporate defendant to produce for plaintiff's inspection and copying such defendant's profit and loss statement and its corporate federal income tax returns for the years 1969, 1970 and 1971, respectively, on the basis that such defendant's income was not in issue and was not a proper subject for discovery. Cf., Ernst & Ernst v. Reedus, Fla.App.1972, 260 So.2d 258." (Appendix "G").

A petition for en banc rehearing was filed by Petitioners on March 28, 1973, and denied by the District Court of Appeal, Fourth District, State of Florida, by order dated April 10, 1973 (Appendix "H").

A Petition for Certiorari and brief in support thereof in the Supreme Court of Florida were filed on April 23, 1973. The Petition sought review of the decision of the District Court of Appeal. Also, a direct appeal was filed on May 14, 1973, and the appeals were consolidated on May 16, 1973. Thereafter, on July 10, 1973, the Supeme Court of Florida denied certiorari and dis-

missed the appeal, and issued an order thereon. (Appendix "J")

REASONS FOR GRANTING WRIT

The orders of the trial court constitute a violation of the letter and spirit of *New York Times v. Sullivan* (1964) 376 U.S. 254, and succeeding cases, particularly *Rosenbloom v. Metromedia,* 403 U.S. 29 (1971).

The Federal questions sought to be reviewed were raised in the court of first instance by Petitioners' motion for protective order and to quash subpoena duces tecum, filed in the trial court (Circuit Court of the Seventeenth Judicial Circuit of Florida, in and for Broward County) on August 3, 1972 (Appendix "B"). This motion was filed in an effort to prevent discovery of the financial matters previously alluded to. The motion contained various grounds, but in paragraph 7, Amendments I and XIV to the Constitution of the United States were specifically urged.

Also, in the trial court, the Federal question was raised by Petitioners' motion to strike, filed August 8, 1972. The motion was based upon the First Amendment case of this Court, *New York Times v. Sullivan,* supra.

The state trial court denied the motion for protective order and to quash subpoena duces tecum and the motion to strike, (Appendices "C" and "D"), said orders being dated August 8, 1972, and August 28, 1972, respectively. It was from these orders that a Petition for Writ of Certiorari was timely filed to the District Court of Appeal, Fourth District, State of Florida. Again, the

Federal questions were strenuously argued in Petitioners' Petition for Writ of Certiorari and supporting brief, and the brief of amicus curiae. The petition for rehearing (Appendix "E") also raised the pertinent Federal questions.

Once again, the Federal questions were raised in Petitioners' Petition for Writ of Certiorari and supporting brief, and the brief of amicus curiae in the Supreme Court of Florida. The assignments of error filed in the direct appeal to the Supreme Court of Florida cited the Federal questions sought to be reviewed (Appendix "I").

ARGUMENT

It is submitted that the Seventeenth Judicial Circuit Court, Broward County, State of Florida, has decided a Federal question of substance in a way not in accord with applicable decisions of this Court and not theretofore determined by this Court.

The ruling of the Florida court does not properly apply the Federal Constitutional law. The Respondent in the instant case is a public official; therefore, this is a First Amendment case. In numerous First Amendment cases, the Courts have recognized that the litigation process itself may have a Constitutionally and impermissible chilling effect on freedom of expression. If a newspaper, for example, must face the prospect of protracted litigation each time it publishes articles on controversial subjects, the newspaper might tend to begin avoiding controversies, and printing only bland, "safe" matter. The result would be to stifle the free flow of information our society has so long cherished. There-

fore, the courts have struck down deterrents to free publication whose "chilling effect" would tend to induce self-censorship.

In *New York Times v. Sullivan,* supra, the principal reason for the doctrine announced therein was to provide more "elbow room" for free expression on subjects of public interest.

> "Would-be critics of official conduct may be deterred from voicing their criticism even though it is believed to be true and even though it is in fact true because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which steer far wider of the unlawful zone. *Spizer v. Randall,* supra, 357 U.S. at 526.
>
> The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments." *New York Times v. Sullivan,* 376 U. S. at 279.

Justice Brennan of this Court, in *Rosenbloom v. Metromedia,* restated this principle:

> "The very possibility of having to engage in litigation, an expensive and protracted process, is threat enough to cause discussion and debate to steer far wider of the unlawful zone, thereby keeping protected discussion from public cognizance. *Spizer v. Randall,* 357 U.S. at 526, 2 Law Ed. 2d at 1473, 43 U.S. at 52-53."

If a public official plaintiff in a libel action against a newspaper is allowed, simply because he alleges punitive damages, to obtain access to the confidential financial affairs of the newspaper, it would result in precisely the "chilling effect" that the *New York Times v. Sullivan* doctrine was designed to prevent. Even in cases not involving the First Amendment, litigants are protected from harassing discovery, but in First Amendment cases, the Constitutional protections of *New York Times v. Sullivan* will be destroyed if broad discovery of confidential financial matters, including United States income tax returns, are forced from a newspaper defendant.

The State court was in error when it failed to grant Petitioners' motion for summary judgment. The denial of the motion for summary judgment is not appealable by way of interlocutory appeal according to Florida procedural rules. The Respondent, notwithstanding the fact that he has been furnished a net worth statement entirely adequate for his alleged purposes, seeks to harass your Petitioner newspaper by seeking to depose its Treasurer on matters of financial detail.

As a general rule, the financial circumstances in any action is immaterial and discovery in this area would be barred. Punitive damage cases in Florida courts are treated as an exception to this general rule; the rule usually being that if any punitive damages are, in fact, to be awarded, the wealth of the defendants may be considered in determining the amount of punitive damages to be assessed. *Lewis v. Moody,* 195 So.2d 260 (Fla.D.C.A. 1967). In this particular instance, a public official plaintiff is involved and as such, as this Court has said many times, must pass an extremely stringent

test to impose liability upon a newspaper for publications critical of the official's public actions, even if the publisher eventually wins on the merits. If he has been forced to spend substantial sums for defense and reveal his confidential financial affairs in the process, the "chilling effect" sought to be avoided by *New York Times v. Sullivan* and its progeny has, in fact, not been avoided. It would certainly appear that a more just result would be obtained by at least deferring discovery until this public official plaintiff proves actual malice by "clear and convincing evidence."

There are ample precedents for such deferrals of discovery. In Florida, in the case of *Charles Sales Corp. v. Robinger,* 88 So.2d 551 (1956), the court deferred discovery of the financial affairs of the defendant in an accounting action until the plaintiff established his right to the accounting. The New Jersey courts have established that discovery of the defendant's financial affairs has bearing on the issue of punitive damages in tort actions, such as libel and malicious prosecution, be conditioned upon the plaintiff making an affirmative showing of his right to collect punitive damages from the defendant. *Gierman v. Toman,* 77 N.J. Super. 18, 185 A.2d 241 (1962); *Warren v. Hague,* 11 N.J. Super. 311, 78 A.2d 300 (1951). The Court in the former case reasoned persuasively as follows:

> "There is no connection between a defendant's wealth and compensatory damages but there is such connection when exemplary damages are demanded. The obviously objectionable features of the present demand are invasion of a traditionally personal and private domain as well as inconvenience

of disclosing details. Strictly speaking, orderly procedure requires liability to be proved before damages are available. However, since pretrial discovery precedes proof, should a prima facie showing of the right to damages support such a demand? Defendant, even when successful in litigation, absorbs unrecoverable costs and inconvenience. While orderly procedure is preferable, deviation is a common practice. The exigencies of a trial require departure at times. However, where a right of a litigant to insist on orderly procedure raises a substantial question of prejudice, albeit of an intangible nature, the strict adherence to procedure seems called for where the character of the harm is irreparable. See *Handelman v. Handelman,* 17 N.J. 1, 10, 109 A.2d 797 (1954). Just and orderly procedure here requires that prima facie proof of the right to recover punitive damages should precede the right to a general disclosure of wealth; and as to specific details such as requested here, the rules furnished sufficient protection against abuse and harassment." 185 A.2d at 244.

Petitioner would reiterate that the Respondent has already received more than he is entitled to on the issue of financial condition. Respondent has received sworn statements showing the newspaper's assets, liabilities and net worth. This information furnished by Petitioners to Respondent is certainly the only aspect of the newspaper's financial status that is conceivably relevant. The Petitioner newspaper has admitted a net worth of approximately $14,000,000.00. Notwithstanding this disclosure, the lower court has required the production of the newspaper's Federal income tax returns

and other confidential information. The United States Statutes provide that Federal income tax returns be treated in strict confidence. Criminal penalties are provided for unauthorized disclosure. 26 U.S.C. Sec. 6103 Appendix ("L") and Sec. 7213 (a) Appendix ("M"). Except for cases in which the Government is a party, there is only one type of case in which a litigant's Federal income tax returns are subject to discovery: when the litigant himself has placed his income at issue. The most recent case in which this subject was analyzed is *Federal Savings and Loan Ins. Corp. v. Krueger,* 41 U.S.L.W. 2040 (U.S. D.C. N.Ill. July 12, 1972) where the Court gave the following reasons for denying plaintiff the right to discover defendant's federal income tax returns:

> "The Court has weighed the liberal discovery theories advanced in some cases against the protection of confidentiality provided by statute and believes in the instant case production by defendants is definitely not warranted. If this were a case where the taxpayer had made an issue of his income, such as claiming loss due to injury, there would be no question that he had waived the confidentiality of his returns and had thereby opened them up to scrutiny by his opponent. Unless a litigant himself makes an issue of his income, his income tax returns are not subject to discovery. Defendants here have not made an issue of their income. To compel the taxpayers themselves to furnish copies of their returns unless they have waived that right by making an issue of their income would be a subterfuge and defeat the very purpose of the statute." 41 U.S.L.W. at 2041.

CONCLUSION

For the reasons set forth hereinabove, this Petition for a Writ of Certiorari should be granted. Petitioners respectfully urge this Court to reverse the orders of the Seventeenth Judicial Circuit Court, Broward County, State of Florida, concurrently with its issuing the Writ of Certiorari.

Respectfully submitted,

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APPENDIX "A"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. CIVIL ACTION

CASE NO,. 70 C 3600 Hewitt

LLOYD F. EARLY,

Plaintiff,

vs.

PALM BEACH NEWSPAPERS, INC., et al.,

Defendants.

ORDER

This cause was heard upon Defendants' motion, served April 9, 1971, for summary judgment.

A consideration of this file reveals that many of Defendants' news articles, editorials and cartoons of which Plaintiff complains, enumerated in the statement of particulars served January 20, 1971, clearly fail to constitute false and defamatory language. See *New York Times Co. v. Sullivan*, 84 S.Ct. 710 (1964); *Ocala Star-Banner Co. et al v. Damron*, 91 S.Ct. 628 (1971); *Garrison v. State of Louisiana*, 85 S.Ct. 209 (1964); *Monitor Patriot Co. v. Roy*, 91 S.Ct. 621 (1971); *Time, Inc. v. Pape*, 91 S.Ct. 633 (1971). As to these matters Defendants are entitled to a summary judgement as a matter of law. See Florida Rules of

Civil Procedure, Rule 1.510; *Page v. Staley,* 226 So.2d 129 (Fla.1969).

The issue of conspiracy can not be resolved by the Court on the motion for summary judgment because the motion places upon Defendants the burden to demonstrate affirmatively the absence of any facts and inferences that would create an issue of conspiracy. In the light of this record the Court is unable to conclude as a matter of law that there is a complete absence of a genuine issue of conspiracy and the motion for summary judgment on this issue must be denied. See Florida Rules of Civil Procedure, Rule 1.510. Thereupon, it is

ORDERED as follows:

1. Defendants' motion for summary judgment is denied as to portions of the Plaintiff's exhibit to Paragraph 3 attached to Plaintiff's statement of particulars, served January 20, 1971, appearing as Clerk's Entry No. 48, as follows:

Paragraph 1 in its entirety.

The following portion of Paragraph 2:

". . . but that confidence began eroding as the board observed his administration of the system."

"Privately alarmed at what members said they felt was mismanagement . . ."

"He (Below) was given instructions that he, not Early, was to manage the school system, providing the leadership which board members felt had been lacking." Parenthesis provided.

"Both Below and Early have been informed by at least three board members that the deputy is to call the shots."

". . . no reaction to the orders which leave him powerless."

" 'Do not forget,' one said 'that Mr. Early was never able to get a job as a principal.' ".

The following portion of Paragraph 4:

" 'Below is running this school system because you are incapable. Do not interfere with him' . . .".

Paragraph 5 in its entirety.

Paragraph 6 in its entirety.

The following portion of Paragraph 7:

"Now I understand why Russell Below is running our school system and Lloyd Early is not."

Paragraph 8 in its entirety.

The following portion of Paragraph 10:

"ITV isn't a tinkertoy for Mr. Early's private pleasure. He shouldn't be encouraged to dip his fingers further into the school system's soup when a more able man, appointed not elected, is striving to meet crisis situations."

"School board members, who wisely told Mr. Early to keep out of the way, Certainly can't play deaf, dumb and blind when he is messing up the works."

The following portion of Paragraph 16:

"Below, who currently is running the school system under orders from the School Board . . .".

The following portion of Paragraph 20:

"For instance, he spent most of last week visiting relatives along the East Coast but it won't show up on the school records."

"Two weeks ago, he went on a Republican trip to Washington, again on school time."

"Only when Early fills out expense vouchers to collect money for the 'official trips' he takes is there any record of where he goes."

Paragraph 21 in its entirety.

The following portion of Paragraph 22:

"While Below for all practical purposes runs the schools, Supt. Lloyd Early is legally the head of the system."

The following portion of Paragraph 24:

"Below was named deputy superintendent, a new post, when four school board members became alarmed at what they felt was a downhill slide the system was taking under Early."

"Reportedly, Early had promised Mrs. Jordan the job of assistant superintendent in return for her promise not to oppose him when he ran for the superintendency."

Paragraph 26 in its entirety.

The following portion of Paragraph 28:

"Below, brought here by the board when four members became alarmed at the school system's lack of leadership under Early, is under contract only until June."

The following portion of Paragraph 30:

"Certainly, Mr. Below has proved himself a capable leader since he was appointed in June to fill the void created by the weak and elected superintendent, Lloyd Early."

Paragraph 31 in its entirety.

Paragraph 32 in its entirety.

Paragraph 35 in its entirety.

Paragraph 36 in its entirety.

Paragraph 43 in its entirety.

The following portion of Paragraph 46:

"Whatever his good intentions and earnestness, Mr. Early is not qualified for the important job he holds. He offers soft platitudes instead of hard decisions. And at a time when this school system is plagued by critical problems ranging from an enrollment surge to enormous building needs, from inadequate financing to desegregation plans."

"Mr. Early's continuance in his job is becoming

more than an embarrassment. He now is standing in the way of a contract that can seal Mr. Below's services here. His indecisiveness is aggravating to both blacks and whites, militants and otherwise, trying to reconcile with a controversial desegregation plan."

"Certainly Mr. Early knows he is over his head. He ought to step down as graciously as his record will allow. Or, failing this, the governor, if he has his home county and its 68,000 school children at heart, ought to use his influence. At this juncture, anyone can see that more years of Mr. Early are a risk and liability that no political party could afford."

"And just a glance at the board's political infighting and Mr. Early's performance tells why."

The following portion of Paragraph 50:

"A big hurt in this hastily drawn and passed plan is that its sponsor, Mr. Early, couldn't even answer simple questions about it. His plan presentation was slick but his explanation of what he had presented came out mumble-fumble."

"Mr. Below, brought in because Superintendent Lloyd Early was incapable of doing his job, faces an effort on the part of two school board members -- Thelma Wymer and Robert Johnson -- and Mr. Early to send him packing. The other three board members have declared their public support for him."

"Mr. Early has proven himself as a very poor educational doctor at best."

The following portion of Paragraph 56:

"Mr. Early had about as much chance of sneaking that subterfuge by the HEW regional office as he would his TV program past the taxpayer censors."

Paragraph 59 in its entirety.

The following portion of Paragraph 61:

"Anyone can see through such an order. And anyone can see that making educational progress in county schools is difficult business with leadership sometimes as silly as it is shaky."

Paragraph 62 in its entirety.

Paragraph 65 in its entirety.

Paragraph 66 in its entirety.

Paragraph 67 in its entirety.

Paragraph 68 in its entirety.

The following portion of Paragraph 71:

"The school system is plagued by Mr. Early's poor leadership, senseless politics, school board infighting, finances, the desegregation issue, enrollment surges, construction needs. . . ."

Paragraph 76 in its entirety.

Paragraph 78 in its entirety.

Paragraph 80 in its entirety.

Paragraph 81 in its entirety.

The following portion of Paragraph 82:

"If Palm Beach countians didn't owe so much sympathy to children caught in the leaderless school system, they could almost shed a tear for Supt. Lloyd Early."

"Yes, a perfect example. No bed of roses for Mr. Early who is over his head. But, worse, all thorns for children who desperately need guidance at the top so that a good school system will evolve and prepare them for a highly competitive society that is far into the rocket age."

The following portion of Paragraph 83:

"Below was hired by the School Board last June because a majority of the board feels Early is an inept administrator."

"It was learned that Early's personnel changes were developed during the secret weekend meetings."

The following portion of Paragraph 84:

"Ironically, Below was brought into the system by a unanimous vote of the board, because board members said they were deeply concerned because of Early's aimlessness and lack of leadership."

The following portion of Paragraph 85:

"School Supt. Lloyd Early has taken his incredible ineptness one more step by sending dismissal letters to Deputy Supt. Russell Below and School Plant Planning Director Dan Stout."

The following portion of Paragraph 87:

"Palm Beach County Schools, lacking both leadership and money, are in serious trouble."

Paragraph 88 in its entirety.

Paragraph 90 in its entirety.

Paragraph 91 in its entirety.

Paragraph 92 in its entirety.

Paragraph 93 in its entirety.

Paragraph 94 in its entirety.

Paragraph 98 in its entirety.

Paragraph 99 in its entirety.

Paragraph 100 in its entirety.

Paragraph 103 in its entirety.

Paragraph 105 in its entirety.

Paragraph 107 in its entirety.

Paragraph 108 in its entirety.

In all other respects Defendants' motion for summary judgment is granted as to the exhibit to Paragraph 3 attached to Plaintiff's statement of particulars.

2. In all other respects Defendants' motion for summary judgment is denied.

Copy furnished counsel.

DONE AND ORDERED this 27 day of May, A.D. 1971.

s/ Robert S. Hewitt

ROBERT S. HEWITT,
CIRCUIT JUDGE

APPENDIX "B"

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY. CIVIL ACTION

Case No. 71-10447 - Richardson

LLOYD F. EARLY,

Plaintiff,

vs.

PALM BEACH NEWSPAPERS, INC., etc., et al.,

Defendants.

MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA DUCES TECUM

COMES NOW the Defendant, PALM BEACH NEWSPAPERS, INC., a Florida corporation, by and through its undersigned attorneys, and moves this Honorable Court to enter its Order limiting discovery at the deposition of RONALD L. ROSWELL to the net worth of the Defendant corporation, as has been furnished in compliance with Paragraph 1(c) of the Court's Order dated the 10th day of November, 1970. A copy of said Order is attached hereto as "Exhibit A", and a copy of Interrogatories 51 and 52 referred to in said Order is attached hereto as "Exhibit B". Also attached is a copy of the Answers to Interrogatories 51 and 52 as furnished counsel at the Pre-Trial Conference, and for grounds for the Motion to Quash

and Protective Order, and as substantial matters of law relied on, Defendant would show that the subpoena duces tecum served on Defendant's Treasurer, Ronald L. Roswell, commands him to appear with all books, account books and records, including any net worth and profit and loss statements of the Defendant, Palm Beach Newspapers, Inc., since its incorporation in 1969, to the present time.

1. Contrary to the Florida Rules of Civil Procedure and the law of Florida, no good cause has been set forth or shown for the production of said documents, books and records.

2. The documents, books and records are not described with the particularity required by the Florida Rules of Civil Procedure.

3. The scope and reach of the subpoena duces tecum is overly broad and unduly burdensome and oppressive, and an harassment to the Defendant, and not necessary to this litigation.

4. There is no showing of the existence or possession of the vaguely-described documents called for by the subpoena duces tecum.

5. The subpoena duces tecum exceeds and is in violation of the Court's Order of November 10, 1970, paragraph 1 (c). The extent of discovery permissible on this point was argued and determined by said Order, which has been fully complied with by the Defendant. The present attempt to re-open and expand discovery on this point is contrary to the prior Order of the Court, and represents a violation of the principle set

forth in Rule 1.340 (d) of the Florida Rules of Civil Procedure.

6. The reach of the request of discovery is excessive in that all relevant and material information has previously been furnished to Plaintiff in compliance with the Court's Order of November 10, 1970, as above set forth, and that Plaintiff has no right to the compulsion of the process of this Court for the purpose of conducting an audit in the form of a deposition of all of the details of Defendant's business and financial and economic affairs.

7. The documents called for are not subject to discovery under the Florida Rules of Civil Procedure, the Constitution of the United States, and the Constitution of the State of Florida in that the same are privileged against compulsory disclosure by Amendments I and XIV to the Constitution of the United States safeguarding, protecting and guaranteeing freedom of speech and of the press and the right to privacy, and by Article I, Section 4 of the Constitution of the State of Florida guaranteeing freedom of speech and of the press.

WHEREFORE, Defendants pray that this Honorable Court enter a Protective Order limiting the discovery as to financial worth to the information previously furnished counsel in compliance with the Court's Order dated November 10, 1970, and for an Order quashing the subpoena duces tecum.

I HEREBY CERTIFY that copies of the foregoing have been furnished FARISH AND FARISH, Attorneys for Plaintiff, 316 First Street, West Palm Beach, Florida, 33401, and HEUER AND ALBURY, Attor-

neys for Defendants, Suite 200, Pan-American Building, West Palm Beach, Florida, 33401, by hand delivery, this 3rd day of August, 1972.

RYAN, TAYLOR, BOOKER & LAW
Attorneys for Defendant
P.O. Box 14577
North Palm Beach, Florida 33408

By: /s/ JOHN F. LAW, JR.
Of Counsel

EXHIBIT A

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. CIVIL ACTION

CASE NO. 70 C 3600 Hewitt

LLOYD F. EARLY,

Plaintiff,

vs.

PALM BEACH NEWSPAPERS, INC,.
a Florida corporation, et al.,

Defendants.

ORDER

This cause came on to be heard upon the objections to interrogatories served September 2, 1970. Upon stipulation of counsel, argument of counsel and a consideration of the file, it is

ORDERED as follows:

1. As to the objections to interrogatories directed to Robert Sherman as president of the Defendant corporation:

a. The Court approves the agreement that the interrogatories need not be answered by Robert Sherman and may be answered by an officer or agent of the corporation.

b. The Court approves the agreement that interrogatories 13 and 14 shall be limited so as to require information only as to the number of editions sold or delivered; said interrogatories are so amended; and the objections are otherwise overruled.

c. The Court approves the agreement that the information requested by Interrogatories 51 and 52 need not be made available to Plaintiff until the pretrial conference.

d. The Court approves the agreement that objections are withdrawn as to Interrogatories 9, 19, 26, 29, 30, 31, 32, 49, and the objections are therefore overruled.

e. The Court approves the agreement that the information requested by Interrogatory 33 shall be

limited to the time of filing of suit and the objection, as amended, is overruled.

f. Defendant's objections are sustained as to Interrogatory 12.

g. Defendant's objections are overruled as to Interrogatory 15.

h. Defendant's objections are sustained as to Interrogatories 20 through 24, both inclusive, for the reason that the interrogatories are too general and would impose an unnecessary burden upon Defendant.

i. Defendant's objection to Interrogatory No. 27 is sustained because the question is too general.

2. As to the objections to interrogatories directed to Defendants Favre and Kirkpatrick:

a. The Court approves the agreement that Interrogatories 14, 15 and 16 shall be modified so as to require information only as to the articles for which the respective Defendant is responsible, and with said modification, the objections are overruled.

b. The Court approves the agreement that Interrogatory 31 shall be modified to require information relating only to the articles for which each respective Defendant is responsible and the information within the personal knowledge of each Defendant. The objection to the interrogatory, as modified, is therefore overruled.

3. As to the objections to interrogatories directed to

Defendants Sawyer and Arpe:

a. The Court approves the agreement that Interrogatories 14, 15 and 16 shall be modified so as to require information only as to the articles for which the respective Defendant is responsible. The objections to Interrogatories 14, 15 and 16, as modified, are overruled.

b. The Court approves the agreement that the Interrogatories 20, 21, 25, 27, 28, 31, 32, 34, 35 and 41 are modified so as to require information from each Defendant for only the article for which the respective Defendant is responsible and within his personal knowledge. The objections to said interrogatories, as modified, are overruled.

4. The Defendants shall file the answers to interrogatories required hereunder within 30 days of the date of this order.

Copy furnished counsel.

DONE AND ORDERED this 10 day of November, A.D. 1970.

s/ Robert S. Hewitt
ROBERT S. HEWITT,
CIRCUIT JUDGE

EXHIBIT B

Interrogatory No. 47: Did you make an attempt to retract any matter contained in said publications.

Interrogatory No. 48: If so, state:

(a) Each media used to accomplish the retraction.

(b) The name and date of each newspaper or magazine in which any retraction appeared.

(c) The number of column inches devoted to each.

(d) Whether any headline or bold face type identified the article as an apology or retraction.

Interrogatory No. 49: State when and where Defendant corporation was organized.

Interrogatory No. 50: State if the Defendant corporation is a subsidiary of a parent corporation and if so, state the name, place and organization of said parent corporation.

Interrogatory No. 51: If Defendant is a separate corporation, then state the following:

(a) The valuation of the assets, breaking same down into real estate, personal property and intangibles.

(b) The liabilities of said corporation.

(c) The net worth of said corporation.

(d) The income from said corporation for the years 1967, 1968 and 1969 to date.

Interrogatory No. 52: If the Defendant corporation is a subsidiary of a parent corporation, then list the answers to each of the questions set forth in the foregoing interrogatory to said parent corporation.

Interrogatory No. 53: List the name and address of each person who has any knowledge of relevant facts and/or information of the circumstances of this case, setting forth concise statements as to precisely the information which each has within his personal knowledge.

/s/ JOS. D. FARISH, JR.
Jos. D. Farish, Jr.
Of Counsel

ANSWERS TO INTERROGATORY # 51

(A) Valuation of the assets by real estate, personal property and intangibles:

	At December 31, 1969
Real Estate	$ 100,000
Personal Property	5,402,927
Intangible	17,273,356
Total	$22,776,283

(B) The liabilities of the corporation:

	At December 31, 1969
Total liabilities	$ 10,631,597

(C) The net worth of said corporation:

	At December 31, 1969
Net Worth	$ 12,144,686

(D) The income from said corporation for the years

1967, 1968 and 1969 to date:

1967	-0-
1968	-0-
1969	$144,687

APPENDIX "C"

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

NO. 71-10447 Richardson

LLOYD F. EARLY,

Plaintiff,

-vs-

PALM BEACH NEWSPAPERS, INC., etc., et al.,

Defendants.

ORDER

THIS CAUSE came on to be heard upon the respective pending motions of both Plaintiff and Defendant-Palm Beach Newspapers, Inc., and the Court has considered the same, the argument of counsel and is duly advised in the premises.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. That Plaintiff's Motion to Compel Discovery bearing certificate date August 7, 1972, and filed before the court on August 8, 1972, will be granted in part and be denied in part.

The Motion is denied insofar as it seeks to compel the Defendant-Palm Beach to answer Interrogatory 52 as previously propounded since said interrogatory was the subject of the Court's prior order of May 31, 1972; and upon the further ground that Plaintiff is not entitled to inquire into the assets of the Cox Corporation, parent company of the defendant corporation.

2. That Plaintiff's Motion to Compel Discovery seeking an order compelling the witness, Ronald L. Roswell, Treasurer of the Defendant corporation, to be, appear and present himself for the taking of his deposition is granted, and the said Ronald L. Roswell, Treasurer of the defendant corporation, is hereby ordered to present himself for the taking of his deposition at the office of David Finley, a Notary Public, or some other notary, at 520 Pan-A-Building, West Palm Beach, Florida, at 2:00 P.M. on Friday, August 11, 1972, and fail not under penalty of contempt.

The aforesaid Motion to Compel Discovery is granted based upon the previous failure of the witness to respond to a subpoena duly served upon him July 28, 1972 by the Sheriff of Palm Beach County, Florida; and, further by reason of his having failed to respond to the notice of taking deposition previously filed in this cause with respect to the said treasurer of the defendant corporation.

3. That Plaintiff's Motion to Produce filed before the Court on August 8, 1972 will be granted and the Defendant-Palm Beach Newspapers, Inc., is hereby ordered to produce on Friday, August 11, 1972 at 2:00 p.m. at 520 Pan-A Building, West Palm Beach, Florida, before David Finley, Notary Public, for inspec-

tion and copying (a) its detailed balance sheet or statement of net worth for the periods 1969, 1970, and 1971 (b) its profit and loss statement for 1969, 1970 and 1971, the latter being deemed to include any operating statement of profit and loss of the defendant corporation regardless of the title or formal designation which it might bear (c) the corporate federal and/or state tax returns for 1969, 1970 and 1971 of the defendant corporation. In the event the defendant corporation is operating on a fiscal year basis as opposed to a calendar year basis, the items above set forth for the respective fiscal years should be produced.

This order is predicated upon the authority of the following cases: Orlowitz v. Orlowitz, Florida Supreme Court, 1967, 199 So. 2d 97; Parker v. Parker, Fourth District Court of Appeals, Florida, 1966, 182 So. 2d 498; Lewis v. Moody, Third District Court of Appeals, Florida, 1967, 195 So. 2d 260; Fryd Construction Company v. Freeman, Third District Court of Appeals, Florida, 1966, 191 So. 2d 487; together with the language of Rule 1.350, which makes available for inspection, copying or photographing by or on behalf of the moving party any designated papers, books, documents not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination within Rule 1.280(b).

The Court has also considered the cases bearing upon this issue as collected in the Annotation at 27 ALR 3d 1375, and is satisfied that the items herein ordered produced are reasonably calculated to lead to the discovery of facts which might be admissible at the time of the trial, to wit: the true net worth of the defendant corporation, should an award of punitive damages be

then proper under the facts and the law of the case at the time of trial.

4. The Defendant-Palm Beach's Motion for Order of Protection will be granted in part and denied in part.

Pursuant to the authorities previously cited, the defendant's motion will be granted to the extent that production will be ordered solely as to plaintiff and his counsel, and though the documents produced may be inspected, photographed or copied by the plaintiff and his counsel for the preparation or presentation of his case, the same may not be disclosed publicly or to third parties without the prior approval of the Court.

DONE AND ORDERED this 8th day of August, 1972.

/s/ JOSE A. GONZALEZ, JR.
CIRCUIT JUDGE

APPENDIX "D"

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY CIVIL ACTION

Case No. 71-10447 - Richardson

LLOYD F. EARLY,

Plaintiff,

vs.

PALM BEACH NEWSPAPERS, INC., etc., et al.,

Defendants.

ORDER

THIS CAUSE came on to be heard on Defendants' Motion to Strike Plaintiff's claim for punitive damages. After considering argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that Defendants' Motion to Strike the punitive damage claim is hereby denied.

DATED this 28th day of August, 1972.

/s/ JOSE A. GONZALEZ, JR.
Circuit Judge

Copies furnished counsel.

APPENDIX "E"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTIRCT.

CASE NO. 72-859

PALM BEACH NEWSPAPERS, INC., etc., et al,

Petitioners,

vs.

LLOYD F. EARLY,

Respondent.

PETITION FOR REHEARING PURSUANT TO RULE 3.14

COMES NOW the Petitioners, PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE, and respectfully requests this Honorable Court grant a rehearing on Respondent's Motion to Quash Petition for Writ of Certiorari filed September 11, 1972.

Your Petitioners would show as the Court quashed Petitioners' petition for writ of Certiorari on October 10, 1972, your Petitioner is entitled to a rehearing on the following grounds:

1. That the Petition for Writ of Certiorari involved herein is not taken for the purpose of delay nor is it frivolous;

2. That irreparable harm will result if your Petitioners are confined to a direct appeal at the conclusion of this case in a trial court;

3. That your Petitioners will not have an adequate remedy by direct appeal after final judgment in this cause;

4. That substantial questions affecting the right of free speech and free press are involved herein.

WHEREFORE, Petitioners pray that a rehearing be granted and your Petitioner renews its request for oral argument in opposition to the recent motion to quash previously filed herein.

Respectfully submitted,

RYAN, TAYLOR & LAW
P.O. Box 14577
North Palm Beach, Florida
and
HEUER & ALBURY
Suite 200, Pan American Building
West Palm Beach, Florida
Attorneys for Petitioners

By /s/ JOHN F. LAW, JR.
John F. Law, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to FARISH & FARISH, Attorneys for Respondent, 316 First Street, Denco Building, West

Palm Beach, Florida by mail this 17th day of October, 1972.

By /s/ John F. Law, Jr.
Attorney

APPENDIX "F"

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
JULY TERM 1972

PALM BEACH NEWSPAPERS, INC.,
etc., et al.,

Petitioners,

v.

LLOYD F. EARLY,

Respondent.

October 31, 1972.

CASE NO. 72-859.

ORDERED that the October 12, 1972 Petition for Reconsideration filed by Petitioners' Palm Beach Newspapers, Inc., a Florida corporation, Gregory E. Favre, R. H. Kirkpatrick, Tom Sawyer and Jane Arp is granted, and also

ORDERED that the October 17, 1972 Petition for rehearing pursuant to Rule 3.14 filed by the same Petitioners named herein above is granted, and further,

ORDERED that the September 11, 1972 Motion to quash petition for writ of certiorari filed by Respondent Lloyd F. Early shall be reconsidered after oral argument before this court to be scheduled for 9:00 A.M. Monday, November 13, 1972, and further,

ORDERED that the October 16, 1972 Motion for permission to file Amicus Curiae Brief by the various moving Florida newspaper publishers and the Florida Press Association is granted, and the said Amicus Curiae Brief received in this court October 16, 1972 is hereby ordered filed in the above-styled cause.

A TRUE COPY
(COURT SEAL)

/s/ EMMETT J. COMISKEY
CLERK

cc: Ryan Taylor & Law
Heuer & Albury
Farish & Farish

APPENDIX "G"

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1973

CASE NO. 72-859.

PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE,

Petitioners,

v.

LLOYD F. EARLY,

Respondent.

Opinion filed March 16, 1973.

Petition for Writ of Certiorari to the Circuit Court for Broward County; Jose A. Gonzalez, Jr., Judge.

John F. Law, Jr. of Ryan Taylor & Law, North Palm Beach, and Heuer & Albury, West Palm Beach, for petitioners.

F. Kendall Slinkman, III and Jos. D. Farish, Jr. of Farish & Farish, West Palm Beach, for respondent.

Dan Paul and James Beasley of Paul & Thomson, Miami, as Amicus Curiae, for The Miami Herald, Leesburg Daily Commercial, Palatka Daily News, Fernandina News-Leader, Avon Park Sun, Sebring News,

Gainesville Sun, Ocala Star Banner, Lake City Daily Reporter, and The Ledger of Polk County.

DuBose Ausley of Ausley Ausley McMullen McGehee & Carothers, Tallahassee, as Amicus Curiae, for Tallahassee Democrat.

Thomas T. Cobb of Cobb Cole Sigerson McCoy Bell & Bond, Daytona Beach, as Amicus Curiae, for Daytona Beach Morning Journal and Daytona Beach News-Journal.

Fred T. Gallagher of Vocelle & Gallagher, Vero Beach, as Amicus Curiae, for Vero Beach Press Journal.

Theodore Hainline of Fleming O'Bryan & Fleming, Fort Lauderdale, as Amicus Curiae, for Fort Lauderdale Daily News and Orlando Sentinel.

S. Lindsey Holland, Jr., of Crofton Holland & Starling, Melbourne, as Amicus Curiae, for Today of Brevard County, Titusville Star Advocate and Melbourne Times.

Frank J. Holroyd, Jr., Sarasota, as Amicus Curiae, for Sarasota Herald Tribune and Sarasota Journal.

William J. McLeod of Baynard McLeod Lang & Eckert, St. Petersburg, as Amicus Curiae, for St. Petersburg Times.

W. S. Rodgers, Jr. of McFarlane Ferguson Allison & Kelly, Tampa, as Amicus Curiae, for Tampa Tribune.

Judson A. Samuels, Hollywood, as Amicus Curiae, for Hollywood Sun-Tattler and Stuart News.

Harold B. Wahl of Loftin and Wahl, Jacksonville, as Amicus Curiae, for The Florida Times-Union, Jacksonville Journal, and The St. Augustine Record.

J. Klein Wigginton of McClure Wigginton & McClure, Tallahasseee, as Amicus Curiae, for Florida Press Association.

James M. Talley, Publisher, as Amicus Curiae, for The Sun-Journal of Hernando County.

PER CURIAM.

The petition for writ of certiorari seeking review of an order denying defendants' motion to strike the claim for punitive damages, and an order which denied in part defendants' motion for protective order, is denied without prejudice to petitioners' right to have such matters reviewed upon full appeal if properly assigned and argued.

REED, C.J. and CROSS, J., concur.
OWEN, J., concurs in part and dissents in part.

OWEN, J., concurring in part and dissenting in part.

I would grant certiorari as to that portion of the order denying the defendants' motion for protective order which required the corporate defendant to produce for plaintiff's inspection and copying such defendant's profit and loss statement and its corporate federal income tax returns for the years 1969, 1970 and 1971, respectively, on the basis that such defendant's income was not in issue and was not a proper subject for discovery. Cf., Ernst & Ernst v. Reedus, Fla.App.1972, 260 So.2d 258.

APPENDIX "H"

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1973

Case No. 72-859

PALM BEACH NEWSPAPERS, INC., a Florida Corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE,

Petitioners,

v.

LLOYD F. EARLY,

Respondent.

APRIL 10, 1973.

ORDERED that the Petitioners' Petition for En Banc Rehearing, filed March 28, 1973, is hereby denied.

A TRUE COPY
(COURT SEAL)

/s/ EMMETT J. COMISKEY
CLERK

cc: Ryan Taylor & Law
Heuer & Albury
Farish & Farish

APPENDIX "I"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT JANUARY TERM, 1973

Case No. 72-859

PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE,

Appellants,

vs.

LLOYD F. EARLY,

Appellee.

ASSIGNMENTS OF ERROR

The Appellants, PALM BEACH NEWSPAPERS, INC., a Florida corporation, GREGORY E. FAVRE, R. H. KIRKPATRICK, TOM SAWYER and JANE ARPE, assign the following errors to be asserted on the appeal heretofore filed in this cause:

1. The Court was in error when it construed a Federal Statute, to wit: United States Code, Volume 26, Section 6103, "Publicity of returns and disclosure of information to persons filing income tax returns", and Section 7213(a), "Unauthorized disclosure of information (a) Income returns."

2. The Court was in error in its construction of a

controlling provision of the Florida Constitution, to wit: Article I, Section IV, guaranteeing freedom of speech and press. Pertinent portions quoted as follows:

> "Every person may speak, write and publish his sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

3. The Court was in error in its construction of Amendments I and XIV of the Constitution of the United States, safeguarding, protecting and guaranteeing freedom of speech and of the press, and the right to privacy.

> "Amendment I (1791) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Pertinent portions of Amendment XIV are quoted as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. The Court was in error when it entered its Order dated March 16, 1973, denying Petitioners' Petition

for Writ of Certiorari for review of an order denying defendants' motion to strike the claim for punitive damages, and an order which denied in part defendants' motion for protective order.

5. The Court was in error when it entered its Order dated March 16, 1973, and its Order of April 10, 1973, in that they are contrary to law, more specifically it is contrary to United States Code, Volume 26, Section 6103 and 7213(a), and contrary to the rights guaranteed by Article I, Section IV of the Constitution of the State of Florida, and Amendments I and XIV of the Constitution of the United States.

RYAN, TAYLOR & LAW
P.O. Box 14577
North Palm Beach, Florida,
and
HEUER & ALBURY
Suite 200, Pan-American Building
West Palm Beach, Florida
Attorneys for Appellants

By:/s/ John F. Law, Jr.
Of Counsel

I HEREBY CERTIFY that a copy of the foregoing has been furnished FARISH & FARISH, Attorneys for Appellee, 316 First Street, Denco Building, West Palm Beach, Florida, 33401, by mail, this 18th day of May, 1973.

/s/ John F. Law, Jr.
Attorney

APPENDIX "J"

Supreme Court of Florida
JULY TERM, A. D. 1973
TUESDAY, JULY 10, 1973

CASE NOS. 43,698 (Certiorari)
43,798 (Appeal)
DISTRICT COURT OF APPEAL,
FOURTH DISTRICT
No. 72-859
(CONSOLIDATED CASES)

PALM BEACH NEWSPAPERS, INC.,
ETC., ET AL.,

Petitioners,
Appellants,

vs.

LLOYD F. EARLY,

Respondent,
Appellee.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

The Motion to Dismiss Appeal filed by appellee Early is granted and it is ordered that the Appeal be and the same is hereby dismissed. ROBERTS, Acting

Chief Justice, ERVIN, ADKINS and BOYD, JJ., concur McCAIN, J., concurs specially

McCAIN, J., concurring specially:

I particularly note that the trial court, while ordering production of certain documents, also prohibited any disclosure of them publicly or to third persons without prior approval of that court. I have no reason to believe that any violation of this order will occur.

A True Copy
(COURT SEAL)
TEST:

Sid J. White
Clerk Supreme Court.
By: s/ Kay D. Yent
Deputy Clerk

YCC: Hon. E. J. Comiskey,
Clerk
Clerk, Circuit Court
Hon. Jose A. Gonzalez, Jr.,
Judge
Ryan, Taylor & Law
Heuer & Albury
Farish & Farish
Paul & Thomson
Ausley, Ausley, McMullen,
McGehee & Carothers
Cobb, Cole, Sigerson,
McCoy, Bell & Bond
Vocelle & Gallagher
Fleming, O'Bryan & Flem-
ing

Crofton, Holland & Starling
Hon. Frank J. Holroyd, Jr.
Baynard, McLeod, Lang & Eckert
Hon. Judson A. Samuels
Lofton and Wahl
McClure, Wigginton & McClure

APPENDIX "K"

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1973
THURSDAY, OCTOBER 11, 1973

CASE NO. 43,698 (Certiorari)
CASE NO. 43,798 (Appeal)

consolidated cases

PALM BEACH NEWSPAPERS, INC., ETC., ET AL.,

Petitioners,
Appellants,

vs.

LLOYD F. EARLY,

Respondent,
Appellee.

Petitioners-Appellants' petition for extension of time for issuance of mandate is granted and proceedings in the Fourth District Court of Appeal and in the Circuit Court in and for Broward County, Florida are stayed to and including November 12, 1973 to enable petitioners-appellants to seek review in the United States Supreme Court and obtain any further stay from that Court.

On consideration of the petition for rehearing filed by attorneys for petitioners-appellants,

IT IS ORDERED by the Court that said petition be

and the same is hereby denied.

ROBERTS, Acting Chief Justice, ERVIN, ADKINS, BOYD and McCAIN, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Kay D. Yent,
Deputy Clerk.
Hon. E. J. Comiskey, Clerk
Clerk, Circuit Court
CC: Hon. Jose A. Gonzalez, Jr., Judge
Ryan, Taylor & Law
Heuer & Albury
Farish & Farish
(Hon. Jos. D. Farish, Jr., Hon. F. Kendall Slinkman)
Paul & Thomson
(Hon. Dan Paul, Hon. James W. Beasley)
Ausley, Ausley, McMullen, McGehee & Carothers
(Hon. DuBose Ausley)
Cobb, Cole, Sigerson, McCoy, Bell & Bond (Hon. Thomas T. Cobb)
Vocelle & Gallagher) (Hon. Fred D. Gallagher)
Fleming, O'Bryan & Flem-

ing (Hon. Theodore R. Hainline)
Crofton, Holland & Starling (Hon. S. Lindsey Holland, Jr.)
Hon. Frank J. Holroyd, Jr.
Baynard, McLeod, Lang & Eckert (Hon. William J. McLeod)
Hon. Judson A. Samuels
Loftin and Wahl (Hon. Harold B. Wahl)
McClure Wigginton McClure

APPENDIX "L"

26 U.S.C.A. SEC. 6103

Publicity of returns and disclosure of information as to persons filing income tax returns

(a) Public record and inspection.-

(1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, subchapter B of chapter 37, and chapter 41, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

(b) Inspection by States.-

(1) State officers.--The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(2) State bodies or commissions.--All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose

of, and may be used only for, the administration of such tax laws.

(c) Inspection by shareholders.--All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) Inspection by Committees of Congress.-

(1) Committees on Ways and Means and Finance.-

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) Joint Committee on Internal Revenue Taxation.--The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) Declarations of estimated tax.--For purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

(f) Disclosure of information as to persons filing income tax returns.--The Secretary or his delegate shall, upon inquiry as to whether any person has filed an income tax return in a designated internal revenue district for a particular taxable year, furnish to the inquirer, in such manner as the Secretary or his delegate may determine, information showing that such person has, or has not, filed an income tax return in such district for such taxable year. Aug. 16, 1954, c. 736, 68A Stat. 753; Sept. 2, 1964, Pub.L. 88-563, Sec. 3(c), 78 Stat. 844; June 21, 1965 Pub.L. 89-44, Title VI, Sec. 601(a), 79 Stat. 153; Nov. 2, 1966, Pub.L. 89-713, Sec. 4(a), 80 Stat. 1109.

APPENDIX "M"

26 U.S.C.A. SEC. 7213(a)

Unauthorized disclosure of information

(a) Income returns.-

(1) Federal employees and other persons.--It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) State employees.--Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103(b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person

in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103(b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103(b), to be seen or examined by any person except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(3) **Shareholders.**--Any shareholder who pursuant to the provisions of section 6103(c) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the cost of prosecution.

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 33, I certify that I have this November ---, 1973, deposited in the United States mail box at West Palm Beach, Florida, with first-class postage prepaid, envelopes containing copies of the foregoing petition and appendices addressed to (1) Hon. Joseph Farish, Jr., Attorney for Respondent and counsel of record for him, at his office address, 316 First Street, Denco Building, West Palm Beach, Florida, 33401; (2) Hon. Sid J. White, Clerk, Supreme Court of Florida, Tallahassee, Florida, 32304; and (3) Hon. Emmett J. Comiskey, Clerk, Florida District Court of Appeal, Fourth District, P. O. Drawer A, West Palm Beach, Florida, 33402 and Clyde L. Heath, Clerk, Seventeenth Judicial Circuit Court, Broward County, State of Florida; and that these are all the parties required to be served.

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John F. Law, Jr.